

SENATE RECORD VOTE ANALYSIS

104th Congress
1st Session

Vote No. 168

May 16, 1995, 10:35 a.m.
Page S-6709 Temp. Record

INTERSTATE WASTE/Flow Control in Washington State

SUBJECT: Interstate Transportation of Municipal Solid Waste Act of 1995 . . . S. 534. Smith motion to table the Murray/Gorton amendment No. 1079.

ACTION: MOTION TO TABLE AGREED TO, 54-45

SYNOPSIS: As reported, S. 534, the Interstate Transportation of Municipal Solid Waste Act of 1995, will allow States to place limits on the import of out-of-State municipal solid waste, will provide limited authority to States and municipalities to specify the destination sites for municipal solid wastes in their jurisdictions (flow control), and will reinstate the groundwater monitoring exemption for small municipal landfills (that exemption was reversed as a result of a Sierra Club lawsuit).

The Murray/Gorton amendment would permit a political subdivision of a State to exercise flow control authority for municipal solid waste and recyclable materials if it met all of the following conditions:

- it was required and given authority by State statutes enacted prior to January 1, 1990 to develop and implement a solid waste management plan;
- it was under contractual obligation from before the 1994 *Carbone* decision to utilize existing solid waste systems;
- it was currently undertaking a recycling program (started before the *Carbone* decision) in accordance with a State goal to recycle 50 percent of municipal trash; and
- it had made significant financial commitments or had issued bonds prior to the *Carbone* decision largely for the purpose of constructing solid waste management facilities.

The intent of the amendment was to permit flow control authority in the State of Washington for the 30-year period that this bill will allow some flow control to continue.

Debate was limited by unanimous consent. Following debate, Senator Smith moved to table the Murray/Gorton amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

(See other side)

YEAS (54)			NAYS (45)			NOT VOTING (1)	
Republicans (40 or 75%)		Democrats (14 or 30%)	Republicans (13 or 25%)		Democrats (32 or 70%)	Republicans (1)	Democrats (0)
Abraham	Hatfield	Baucus	Bennett	Akaka	Hollings	Inhofe- ²	
Ashcroft	Hutchison	Biden	Cochran	Boxer	Inouye		
Bond	Kassebaum	Bingaman	Domenici	Breaux	Johnston		
Brown	Kempthorne	Bradley	Gorton	Bryan	Kennedy		
Burns	Kyl	Dodd	Grassley	Bumpers	Kerry		
Campbell	Lugar	Heflin	Helms	Byrd	Kohl		
Chafee	McCain	Kerrey	Jeffords	Conrad	Leahy		
Coats	McConnell	Lautenberg	Lott	Daschle	Levin		
Cohen	Murkowski	Lieberman	Mack	Dorgan	Mikulski		
Coverdell	Packwood	Moynihan	Nickles	Exon	Moseley-Braun		
Craig	Pressler	Nunn	Shelby	Feingold	Murray		
D'Amato	Roth	Pell	Stevens	Feinstein	Pryor		
DeWine	Santorum	Reid	Thompson	Ford	Rockefeller		
Dole	Simpson	Robb		Glenn	Sarbanes		
Faircloth	Smith			Graham	Simon		
Frist	Snowe			Harkin	Wellstone		
Gramm	Specter						
Grams	Thomas						
Gregg	Thurmond						
Hatch	Warner						

EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

If Congress does not act, flow control will be illegal everywhere in the country. As a matter of principle, we are not inclined to act. Governments should not interfere in the free market when such interference is not necessary to achieve legitimate public ends. According to the Environmental Protection Agency, there is no evidence that districts with flow control achieve better results in reducing volumes of trash, recycling, or proper waste disposal than districts without flow control. Private companies, without government direction, are able to meet government standards as well as government-run facilities meet them, and they do it more efficiently.

Nevertheless, we recognize that before the *Carbone* decision many investors bought bonds for specific government waste disposal facilities on the understanding that those facilities would have a guaranteed supply of trash. The value of those bonds has been hurt by the *Carbone* decision. Trash haulers will not take trash to expensive government facilities if they can dump it more cheaply at private facilities. Therefore, though it is an anti-competitive action, we have agreed to support a bill that will allow flow control to continue until those bonds are paid off.

We have also agreed to accept two other narrow exceptions for continuing flow control for a short period of time. We do not agree with those exceptions, but many Senators wanted them, and wanted much greater exceptions as well. The Murray/Gorton amendment is an example of the type of greater exception which was requested. This amendment would basically give any district in Washington the right to exercise flow control if it wished for the next 30 years. It is narrow only in the sense that it applies just to Washington; however, it would serve as a precedent for every other State to demand flow control authority for any reason. No other flow control amendment could then be logically defeated. If this amendment were to pass, we would have to withdraw the bill. Those Senators who oppose flow control, such as we, could not support a bill which would essentially overturn the *Carbone* decision for the next 30 years. We therefore ask our colleagues to join us in tabling the Murray/Gorton amendment.

Those opposing the motion to table contended:

Flow control is widely practiced throughout the State of Washington under a highly successful State plan to recycle 50 percent of its municipal solid waste. Local governments have voluntarily set up systems under that plan to recycle waste. Those plans, which generally involve competitive bidding, have resulted in lower disposal costs than are found elsewhere in the country. Washington State is clearly leading the way in solid waste management. Most waste districts in Washington practice some form of flow control, which was found to be unconstitutional under the *Carbone* decision unless authorized by Congress. This bill grants some authority for flow control to continue, for a maximum of 30 years. Basically, those waste districts that issued obligational bonds for specific facilities will be given flow control authority. Unfortunately for most Washington districts, though, they did not finance their facilities through obligational bonds. Instead, they paid for them out of general revenue by issuing general revenue bonds or by paying for them up-front. Thus, these districts have incurred great expenses to meet their recycling goals by building waste facilities, their investments have been severely harmed by the *Carbone* decision which will end their flow control to their facilities, and this bill fails to provide relief because of the manner in which they financed their investments. This situation is unfair. The Murray/Gorton amendment would not discriminate against Washington State because its districts have financed their flow control plans in a manner which we believe frankly is more responsible than the manner which is protected by this bill. The amendment is narrowly crafted so as to apply only to the State of Washington. It is fair, and deserves our support.